



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VIII



EP506242

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999 18th STREET - SUITE 500

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DENVER, COLORADO 80202-2405

Ref: 8WM-WQ

Mr. Dan Fraser, Chief
Water Quality Bureau
Dept. of Health and Env. Science
Cogswell Bldg.
Helena, MT 59620

NOTE TO READER: Uniquely-addressed versions of this document were mailed to representatives of each State within EPA Region VIII. Address information on the enclosed mailing list is assumed for each States' file copy.

Re: Lists of Waters and
Dischargers Per Requirements
Under Section 303(d) and
304(l) of Clean Water Act

Dear Dan:

The purpose of this correspondence is to further clarify the upcoming requirements related to the listing of waters and dischargers per recent regulations being promulgated by the EPA. The regulations call for the listings under Section 303(d) and 304(l) of the Clean Water Act. The Section 303(d) waters are those waters in need of Total Maximum Daily Loads (TMDLs) and the Section 304(l) dischargers are those dischargers on the State's 304(l)(1)(C) list of point sources discharging toxics.

Section 303(d) Waters (Due April 1, 1992)

Section 303(d) as well as EPA regulations and guidance call for States to submit a list of waters for which required pollution controls are not stringent enough to maintain compliance with applicable State water quality standards (e.g. waters which require development of a TMDL). Although this provision has been in the regulations for some time, EPA's rule change will require the submittal of this list every other year, starting in April 1992.

In past discussions with each State and in past written guidance, there has been reference to this requirement to identify waters still in need of TMDLs. (See EPA's Water Quality-Based Decision-Making: The TMDL Process as well as EPA's 1992 Guidance on 305(b) reports). Each State list must contain the following:

- . identification all water quality-limited waters still requiring TMDLs;
- . a ranking of the TMDL waters and the pollutants causing or expected to cause a violation of water quality standards; and
- . identification all waters targeted for TMDL development over the next two years.

The submittal of this list is designed to coincide with the April 1 due date for the State 305(b) report to allow a State to incorporate the list into the 305(b) report, although a separate submittal can be made. The Water Body System which is used as part of 305(b) reporting is structured to accommodate the identification of TMDL waters.

To aid in further defining which waters are to be on the TMDL list, we ask each State to include such waters as:

- . those waters with dischargers whose NPDES permit is coming up for renewal over the next two years which are scheduled for an updated wasteload allocation (WLA) to define water quality-based effluent limitations (or to determine whether water quality-based limitations are needed);
- . those waters that are part of the State's Section 314 clean lakes and Section 319 nonpoint source lists where a TMDL will be needed to define levels of control; and
- . those waters that will be affected by any proposed activity which could result in exceedence of water quality standards even after application of technology-based controls.

Based on the regulation, EPA must review the TMDL lists as submitted by each State and either approve, disapprove, or partially approve the lists. If any portion of the list is disapproved or if no submittal is made by April 1992, then the regulation calls for EPA to develop the list of waters, the ranking, and the targeting to TMDLs for the next two years.

Please call the Regional TMDL Coordinator, Bruce Zander (303/293-1580), for further details on the listing of TMDL waters.

Section 304(1) Lists of Dischargers

A recent decision of the U.S. Court of Appeals Ninth Circuit in NRDC v. EPA 915 F.2d 1314 (9th Cir. 1990) has required EPA to expand their definition of what point source facilities are to be included on the Section 304(1)(1)(C) of toxic dischargers. Previously, all point sources impairing water quality due to discharges of 307(a) priority pollutants were required to be listed on the 304(1)(1)(C) list. The Ninth circuit has broadened the link between impaired waters and facilities. States must now list facilities discharging any amount of 307(a) priority

pollutants to impaired waters whether or not those facilities are contributing to the impairment.

The change in the 304(1) rule will not affect the lists of waters--the 304(1) waterbody lists will remain the same. Instead, the rule calls for re-evaluation of the list of dischargers. In addition to using the (B) short list of waters from which to derive the (C) list of dischargers, States are to also use the A(i) and A(ii) lists as a basis for the discharger list.

It has not been decided if the facilities added to the 304(1)(1)(C) list due to this change will require an Individual Control Strategy (ICS) like the previous facilities on the list. Instead, EPA will be soliciting comment pertaining to this matter at the time the rule is published in the Federal Register.

The original date set by EPA for State submittal of modified 304(1)(1)(C) discharger lists was February 2, 1992. We realize that this is an impossibility, so we will be in contact with you to further discuss a reasonable schedule for your State. Our staff has reviewed the 304(1) files and has made a preliminary evaluation of how many dischargers might be added to the discharger lists. For more information on how this could affect your State's list, call Bruce Zander of our Water Quality Branch (303/293-1580) for further information.

For both the 303(d) and 304(1) listings, we encourage the States to allow for public participation as they deem appropriate. It should be noted that, although State 305(b) reports do not typically go through a public review process, both the 303(d) and 304(1) listings should be available for public comment.

Sincerely,

Max H. Dodson, Director
Water Management Division

Colorado's Letter:
Mr. David Holm, Director
Water Quality Control Division
Colorado Department of Health
4210 East 11th Avenue
Denver, CO 80220

bcc: Bob Owen (same address)
John Farrow (same address)

Montana's Letter:
Mr. Dan L. Fraser, Chief
Water Quality Bureau
Department of Health and Environmental Sciences
Cogswell Building
Helena, Montana 59620

bcc: Loren Bahls (same address)
Chris Levine (same address)
Bob Engle (EPA's MOO-FAX to him)

North Dakota's Letter:
Mr. Dennis Fewless, Director
Division of Water Quality
State Department of Health
P.O. Box 5520
Bismarck, ND 58502-5520

bcc: Mike Ell (same address)

South Dakota's Letter:
Mr. Steve Pirner, Director
Department of Environmental Regulation
Division of Environmental and Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3181

bcc: Andrew Rypsys (same address)

Utah's Letter:

Mr. Don Ostler, Director
Division of Water Quality
Department of Environmental Quality
288 North 1460 West
Salt Lake City, UT 84114-4870

bcc: Mike Reichert (same address)
Bill Moellmer (same address)
Tom Toole (same address)
Jay Pitkin (same address)

Wyoming's Letter:

Mr. William Garland, Administrator
Water Quality Control Division
Department of Environmental Quality
Herschler Building
122 West 25th Street
Cheyenne, Wyoming 82002

bcc: Robert Guntow (same address)
John Wagner (same address)